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15. Appeal and Error (§ 1153*)—**Determination of Cause—Final Judgment.**—Where the record affords certain proof by which an excessive verdict can be corrected, a final judgment for the correct amount may be entered on appeal.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4507-4512; Dec. Dig. § 1153.*]

KISER *v.* KISER.

Nov. 19, 1908.

[62 S. E. 936.]

1. Divorce (§ 215*)—**Temporary Alimony.**—It is not error in an action by a husband against his wife for divorce to allow the wife \$150 temporary alimony to enable her to employ counsel and pay the costs of the litigation, where she is old and infirm, no longer capable of labor, and without means of support.

[Ed. Note.—For other cases, see Divorce, Cent. Dig. § 634; Dec. Dig. § 215.*]

2. Divorce (§ 240*)—**Permanent Alimony.**—In an action by a husband for divorce, it was shown that he had sold a tract of land for \$1,680, only \$420 to be paid at the execution or the deed and the balance in installments, the last installment not to become due until the grantor's wife should release her dower right. The prayer for divorce, as well as the prayer in defendant's cross-bill for divorce, was denied, but defendant was given \$500 as permanent alimony, which was to include \$150 temporary alimony, and the grantee, which had been made a defendant, was decreed to pay the wife the amount of her alimony, and on such payment the grantee was released from any claim of the wife to the land. Held, that the decree would be sustained, the allowance of the temporary alimony being proper, and the balance of the award covered the value of the wife's contingent right of dower, and it did not appear just what value was placed upon such right.

[Ed. Note.—For other cases, see Divorce, Cent. Dig. §§ 675-678; Dec. Dig. § 240.*]

BLUE RIDGE LIGHT & POWER CO. *v.* PRICE.

Nov. 19, 1908.

[62 S. E. 938.]

1. Evidence (§ 123*)—**Res Gestæ.**—Conversation between the motorman and a third person after a passenger, who, while attempting to board a street car, had been injured, by being thrown to the ground

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

by the starting of the car, had arisen and got on the car, is no part of the *res gestæ*.

[Ed. Note.—For other cases, see *Evidence*, Cent. Dig. §§ 354, 365; Dec. Dig. § 123.*]

2. Evidence (§ 244*)—**Declarations of Employee After the Event.**—The declaration of the motorman, after a passenger had been injured while attempting to board the car, that he had no right to stop on the railroad track, and his failure to reply, when thereupon he was asked, "What did you stop for, then?" are inadmissible against the carrier; he not being in the performance of any duty within his employment in what he said or in his silence.

[Ed. Note.—For other cases, see *Evidence*, Cent. Dig. § 932; Dec. Dig. § 244.*]

3. Appeal and Error (§ 1050*)—**Harmless Error—Evidence.**—It being a material issue as to whether a street car was still or moving when a passenger attempted to board it with the result of being thrown by the car moving, and the evidence thereon being conflicting, the majority of witnesses testifying it was standing still, it was not harmless to admit evidence that, after the accident, the motorman said he had no right to stop on the railroad track, and made no reply when, thereupon he was asked, "What did you stop for, then?"

[Ed. Note.—For other cases, see *Appeal and Error*, Cent. Dig. § 4155; Dec. Dig. § 1050.*]

4. Evidence (§ 474*)—**Nonexpert Opinions.**—Nonexperts, who were frequently with plaintiff after her alleged injury, and in a situation to know and speak of her condition as lay witnesses could speak, could testify that she did not appear to have such use of her shoulder as enabled her to work as seamstress, and that since the accident she had not been able to do anything with her arm.

[Ed. Note.—For other cases, see *Evidence*, Cent. Dig. § 2197; Dec. Dig. § 474.*]

5. Trial (§ 191*)—**Instructions—Assumption of Fact.**—The instruction that if the jury believe defendant, at the time of the alleged injury, was engaged in running street cars, it was bound to use the utmost care and diligence for the safety of its passengers, and is liable for injuries to its passengers occasioned by the slightest neglect against which human prudence and foresight might have guarded, has for its object merely the statement of the degree of care defendant owed to its passengers; and does not assume plaintiff was a passenger—a question submitted to the jury by other instructions.

[Ed. Note.—For other cases, see *Trial*, Dec. Dig. § 191.*]

6. Trial (§ 244*)—**Instruction—Giving Undue Prominence to Evidence.**—Nbr does such instruction call the attention of the jury to any

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of the evidence on the questions of negligence or contributory negligence.

[Ed. Note.—For other cases, see Trial, Dec. Dig. § 244.*]

7. Carriers (§ 320*)—**Injury to Passenger Boarding Car—Evidence**—**Question for Jury.**—Evidence in an action for injury to a person while attempting to board a street car held sufficient to authorize submission to the jury of the question of the car having been stopped at the point for the purpose of receiving passengers, and of its having been started suddenly and without notice while she was boarding it.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. § 1160; Dec. Dig. § 320.*]

BOWMAN *v.* LISKEY.

Nov. 19, 1908.

[62 S. E. 942.]

1. Appeal and Error (§ 1035*)—**Harmless Error—Form of Remedy.**—Proceedings having been instituted to enforce a vendor's lien to secure purchase money bonds, a special receiver was appointed with petitioner as his surety, and the land was sold and bonds were executed in part payment, and the receiver was authorized to assign the bonds for cash, which he purported to do, and thereafter, the receiver being in default, his surety petitioned to have the purchaser of the bonds from the receiver account for the purchase price, alleging that they were assigned without payment in full, the purchaser and receiver being made parties, and the former was adjudged liable for a certain sum on the bonds. Held, that the granting of the relief against the purchaser, on petition in the vendor's lien proceedings, instead of on an original bill, even if error, was not prejudicial to the purchaser under the circumstances; he having had an opportunity to meet the issues as to his liability as fully as upon an original bill.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4031; Dec. Dig. § 1035.*]

2. Receivers (§ 217*)—**Sale—Payment by Purchaser—Evidence.**—On a petition by a surety of a special receiver appointed in vendor's lien proceedings to compel an accounting by the purchaser of bonds from such receiver which he was authorized by the court to sell, the evidence held to show that the purchaser paid a part of the purchase money of the bonds to the receiver on the understanding that he was to receive it back in payment of a personal indebtedness of the receiver.

[Ed. Note.—For other cases, see Receivers, Dec. Dig. § 217.*]

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